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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

Case No. 2011-964

13 **ROBERT ALLAN PAPCIAK**
14 **8685 Rio San Diego Drive #4420**
San Diego, CA 92108

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about December 2, 2010, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Robert Allan
24 Papciak (Respondent). On or about October 13, 2010, Robert Allan Papciak certified under
25 penalty of perjury to the truthfulness of all statements, answers, and representations in the
26 application. The Board denied the application on February 15, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the
4 crime or act is substantially related to the qualifications, functions, or duties of the
5 business or profession for which application is made. . . .

6 7. Section 482 of the Code states:

7 Each board under the provisions of this code shall develop criteria to evaluate
8 the rehabilitation of a person when:

9 (a) Considering the denial of a license by the board under Section 480; or

10 (b) Considering suspension or revocation of a license under Section 490.

11 Each board shall take into account all competent evidence of rehabilitation
12 furnished by the applicant or licensee.

13 8. Section 2761 of the Code states:

14 The board may take disciplinary action against a certified or licensed nurse or
15 deny an application for a certificate or license for any of the following:

16 (a) Unprofessional conduct, which includes, but is not limited to, the
17 following:

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19 (f) Conviction of a felony or of any offense substantially related to the
20 qualifications, functions, and duties of a registered nurse, in which event the record of
21 the conviction shall be conclusive evidence thereof. . . .

22 9. Section 2762 of the Code states:

23 In addition to other acts constituting unprofessional conduct within the meaning
24 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
25 licensed under this chapter to do any of the following:

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27 (b) Use any controlled substance as defined in Division 10 (commencing with
28 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
dangerous or injurious to himself or herself, any other person, or the public or to the
extent that such use impairs his or her ability to conduct with safety to the public the
practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption,
or self-administration of any of the substances described in subdivisions (a) and (b) of
this section, or the possession of, or falsification of a record pertaining to, the
substances described in subdivision (a) of this section, in which event the record of
the conviction is conclusive evidence thereof. . . .

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant. . . .

FIRST CAUSE FOR DENIAL OF APPLICATION

(December 11, 1998 Criminal Conviction for DUI on November 7, 1998)

12. Respondent's application is subject to denial under sections 480, subdivision (a)(1) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered nurse. The circumstances are as follows:

a. On or about December 11, 1998, in a criminal proceeding entitled *Commonwealth of Massachusetts v. Robert Papciak*, in Cambridge District Court, docket number

1 9852CR003634, Respondent was convicted on his plea of guilty to violating GL c90, § 24,
2 operating a motor vehicle while under the influence of alcohol, a misdemeanor.

3 b. As a result of the conviction, on or about December 11, 1998, Respondent
4 was sentenced to probation, and ordered to pay fees, fines, and restitution.

5 c. The facts that led to the conviction are that on or about the early morning of
6 November 7, 1998, a patrol officer with the Belmont (Massachusetts) Police Department
7 observed a vehicle driven by Respondent traveling at a high rate of speed and passing vehicles on
8 the right. The officer conducted a traffic stop and noted the odor of an alcoholic beverage on
9 Respondent's breath, his speech was thick and slurred, and he appeared confused. While the
10 officer went to his vehicle to call for back-up, Respondent fell asleep. After being woken by the
11 officer, Respondent agreed to perform a series of field sobriety tests. Respondent was unable to
12 perform the tests as explained and demonstrated by the officer. Respondent was arrested for
13 driving under the influence of alcohol. During booking, Respondent provided two breath samples
14 which were analyzed with a blood alcohol concentration (BAC) of .22 and .21 percent.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(February 9, 2007 Criminal Conviction for DUI on October 31, 2006)**

17 13. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
18 of the Code in that he was convicted of a crime that is substantially related to the qualifications,
19 duties, and functions of a registered nurse. The circumstances are as follows:

20 a. On or about February 9, 2007, in a criminal proceeding entitled *People of*
21 *the State of California v. Robert A. Papciak*, in San Diego County Superior Court, case number
22 M005891, Respondent was convicted on his plea of guilty to violating Vehicle Code section
23 23152, subdivision (b), driving with a BAC of .08 percent or more, to wit, .13 percent.

24 b. As a result of the conviction, on or about February 9, 2007, Respondent
25 was sentenced to five years summary probation, ordered to complete a Multiple Conviction
26 Program, and pay fees, fines, and restitution in the amount of \$1,756. On or about September 16,
27 2008, Respondent's probation was revoked, then reinstated on the same terms based on his failure
28 to comply with probation terms.

1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(July 24, 2008 Criminal Conviction for DUI on March 18, 2008)**

3 14. Respondent's application is subject to denial under sections 480, subdivision (a)(1)
4 of the Code in that he was convicted of a crime that is substantially related to the qualifications,
5 duties, and functions of a registered nurse. The circumstances are as follows:

6 a. On or about July 24, 2008, in a criminal proceeding entitled *People of the*
7 *State of California v. Robert A. Papciak*, in San Diego County Superior Court, case number
8 S218679, Respondent was convicted on his plea of guilty to violating Vehicle Code section
9 23152, subdivision (a), driving under the influence of alcohol, a misdemeanor. The court also
10 found true that Respondent was previously convicted of Vehicle Code 23152 within ten years,
11 pursuant to Vehicle Code section 23540.

12 b. As a result of the conviction, on or about July 24, 2008, Respondent was
13 sentenced to five years summary probation, and ordered to serve 96 hours in custody, with credit
14 for 96 hours. Respondent was further ordered to complete a Multiple Conviction Program, attend
15 a MADD Victim Impact Panel, and pay fees, fines, and restitution in the amount of \$2,378.

16 **FOURTH CAUSE FOR DENIAL OF APPLICATION**

17 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

18 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
19 of the Code in that on or about November 7, 1998, October 31, 2006, and March 18, 2008,
20 Respondent used alcoholic beverages to an extent or in a manner that was dangerous and
21 injurious to himself and the public when he operated a motor vehicle while under the influence of
22 alcohol, as detailed in paragraphs 12-14, above, which is a violation of section 2762, subdivision
23 (b) of the Code for a licensed registered nurse.

24 **FIFTH CAUSE FOR DENIAL OF APPLICATION**

25 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

26 16. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
27 of the Code in that on or about December 11, 1998, February 9, 2007, and July 24, 2008,
28 Respondent was convicted of criminal offenses involving the consumption of alcohol as detailed

1 in paragraphs 12-14, above, which are violations of section 2762, subdivision (c) of the Code for
2 a licensed registered nurse.

3 **PRAYER**

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
5 and that following the hearing, the Board of Registered Nursing issue a decision:

- 6 1. Denying the application of Robert Allan Papciak for a Registered Nurse License;
7 2. Taking such other and further action as deemed necessary and proper.

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DATED: 6-3-11


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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